IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 572 of 2002

Date of decision : January 17, 2007.

Sita Ram Chauhan @ S.R.Chauhan,

.....Appellant

through Mr.Sudeep Mahajan, Advocate

v.

Smt. Ramesh Kumari @ Smt. Sunita

.....Respondent

through Mr.B.R.Mahajan, Advocate

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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By way of this Letters Patent Appeal, the appellant impugns the judgment, dated 15.10.2001, passed by the learned Single Judge, whereby FAO No.117 M of 1998, impugning the order, dated 29.4.1998, passed by the Additional District Judge, Gurdaspur, was dismissed.

A brief narrative of the facts would be appropriate.

The appellant and the respondent were married in May, 1969.

After their marriage, they lived at village Saidipur. As per the appellant, the respondent conceived, during her stay of three months but left her matrimonial home in August 1969 and thereafter failed to return and cohabit with the appellant, despite his best efforts. The appellant was posted at Gurdaspur and travelled to and from his village Saidipur, as he had to look after his widowed mother, three younger sisters and brothers. The respondent began coercing the appellant to reside at Gurdaspur. The appellant refused to accede to this demand. The respondent, therefore, packed her jewellery, clothes, as also other articles, and left for Jalandhar. A child was born to the parties on 1.2.1970. The appellant requested the respondent to return. The respondent refused to return and the parties continued to reside separately. In the year 1994, 25 years after the marriage, the appellant filed a petition for dissolution of marriage by grant of a decree of divorce, alleging cruelty and desertion. However, the Additional District Judge, Gurdaspur dismissed the petition.

The appellant preferred an appeal, which was dismissed by the learned Single Judge. The trial Court, as also the learned Single held that the appellant had failed to establish cruelty or desertion on the part of the respondent-wife.

Counsel for the appellant contends that the wife is guilty of desertion. She failed to co-habitat with the appellant, without just cause. It is contended that soon after their marriage, the respondent-wife deserted the appellant, as she was unable to adjust to life in a village. Her admission that she visited her husband and his family members on a few occasions, is sufficient to infer that she was guilty of desertion. It is further contended that the respondent failed to justify her separate residence, thus, raising an

inference that she intended to sever matrimonial ties permanently. The learned Single Judge erred in dismissing the appeal. The learned Single Judge failed to consider the facts of the case and proceeded to dismiss the appeal in a perfunctory manner. The pleadings and the evidence on record clearly indicate an intention on the part of the respondent to sever matrimonial ties permanently and, therefore, desertion, having been established, the learned Single Judge erred in upholding the judgment of the trial Court. Reliance, by counsel for the appellant, is placed upon Adhyatma Bhattar Alwar vs Adhyatma Bhattar Sri Devi, (2002)1 SCC 308, and Dharam Pal vs Smt.Pushpa Devi, 2006(3) Civil Course Cases 168.

As regards the plea of cruelty, it is contended that the appellant resorted to the extreme step of filing a petition for dissolution of marriage, as their daughter's wedding was solemnized, without his consent. Even the invitation card was received by the appellant after the marriage. The aforementioned act, as also the act of withdrawal from matrimony constitute cruelty and entitle the appellant to the grant of a decree of divorce.

Counsel for the respondent, on the other hand, contends that the findings of fact, returned by the trial Court, and as affirmed by the learned Single Judge, do not call for any interference. The appellant deserted the respondent and at no time made any attempt to resume matrimonial ties. He did not file any petition for restitution of conjugal rights and failed to provide any help monetary or otherwise to the respondent. His failure to attend his daughter's marriage, as his choice of groom was not acceded to, is indicative of his fault. The respondent was abandoned by the appellant and left to fend for herself and her daughter. It is further contended that it is

apparent from her written statement and the evidence adduced that in 1969, she was told by her mother-in-law to go to her parents' house, as mothers-in-law and daughters-in-law do not reside together in the month of Sawan. Thereafter, she was never allowed to return permanently to the matrimonial home. The birth of a daughter did not lead to a change of heart. The appellant refused to allow the respondent to reside with him. The respondent took up a job at Jalandhar to provide for herself as also for their minor daughter. She brought up her daughter single handed and, therefore, cannot be said to have deserted the appellant. It is further contended that some time after the marriage, the appellant and his family members started complaining of inadequate dowry. When she expressed her inability to accede to these demands, she was maltreated. She gave birth to a female child on 1.2.1970. The appellant and his family members were unhappy with the birth of a female child. A month after the delivery, the respondent went to village Saidipur. She was taunted about the birth of a female child, accused of being ugly, and was maltreated. Ultimately, she was directed to live with her parents at Jalandhar, till the appellant was transferred from Gurdaspur. She attended marriages of the appellant's sister and the younger brother. After she joined service at Jalandhar, she resided with the appellant during vacations, festivals and other occasions. It was further contended that the divorce petition was filed because the respondent did not accede to the appellant's command that their daughter be married to the son of one Col. Rashpal Singh. The appellant was furious and declined to attend the wedding. His brothers and sisters, however, attended the marriage at Jalandhar. It is contended by counsel for the respondent that in view of the pleadings, as also the evidence, adduced

thereon, it is apparent that the respondent never deserted the appellant and, therefore, the present appeal be dismissed.

We have heard learned counsel for the parties and perused the paper book.

Before we proceed to adjudicate the matter on merits, it would be appropriate to refer to the judgments, cited by counsel for the appellant. In Adhyatma Bhattar Alwar's case (supra), the Hon'ble Supreme Court, while considering the question of desertion, held that the essential ingredients of a successful plea of desertion are (i) separation in fact, and (ii) animus deserendi. The burden to prove these ingredients lies upon the person, who alleges them. A person, alleging desertion, must establish, apart from the factum of separation, intention on the part of the deserting spouse to bring cohabitation permanently to an end. Another ingredient is the absence of consent and conduct motivating the desertion. In Dharam Pal's case (supra), it was held by a Division Bench of this Court that where a wife resides separately, without justification, this conduct raises an inference of abandonment and, thus, an inference of desertion.

There can be no quarrel with the proposition of law, as set out in the aforementioned judgments. However, as the facts of the present case are entirely different, the aforementioned judgments are inapplicable to the present controversy.

The appellant and the respondent are in their late sixties. Both have retired from government service. This unfortunate dispute was brought before the Courts in 1994, twenty five years after their marriage. Mere separate residence, howsoever long, in our considered opinion, would not give rise to an inference or a presumption that a spouse intends to

permanently sever matrimonial ties. The evidence, required to establish "animus deserendi", should be clear, categoric and sufficient to enable a Court to draw an inference that the defaulting spouse intended to sever matrimonial ties, permanently. In the present case, as held by the learned Single Judge, as also by the trial Court, no such material is available on record to draw an inference that the wife intended to sever matrimonial ties permanently. Onus to establish the ingredients of desertion lay squarely on the appellant. His failure to discharge this onus rightly led the learned Single Judge, as also the trial Court to dismiss the appeal, and the petition for grant of divorce respectively. The appellant's failure to establish that the respondent-wife resided separately of her own free will, and without just cause, disentitles the appellant to the grant of a decree of divorce. The judgment of the learned Single Judge, thus, does not call for any inference.

As regards the allegation of cruelty, a perusal of the impugned judgment, as also the judgment, passed by the trial Court, does not disclose any circumstance that would warrant the return of a finding of cruelty by the respondent. The sole contention, as regards cruelty, namely, that the appellant was only informed of the marriage of his daughter, after the marriage, is sought to be established from the alleged receipt of an invitation card after the marriage ceremony. The appellant failed to establish this fact. The findings of fact, returned by the trial Court, and as affirmed by the learned Single Judge, do not call for any interference.

Before we part with the judgment, it would be necessary to notice here that the appellant and the respondent are in the twilight of their lives i.e in their late or middle sixties. All attempts, made by the learned Single Judge, as also by the trial Court to effect a reproachment have

failed. We hope that better sense prevails upon the parties and they would sink the differences and spend their lives together.

With these observations, the present Letters Patent Appeal is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 17, 2007.
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